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IN THE

Supreme Court of the United States

OCTOBER TERM 1946.

Nos. 97, 98.

JULIUS A. KRUG, Secretary of the Interior, et al., *Petitioners*,

v.

SANTA FE PACIFIC RAILROAD COMPANY, *Respondent*.

On writs of certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR THE RESPONDENT.

LAWRENCE CAKE,
Counsel for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OPINIONS BELOW.

The opinion of the District Court (R. 14-18) is reported in 57 F. Supp. 984. The opinion of the United States Court of Appeals for the District of Columbia (R. 36-42) is reported in 153 F. (2d) 305.

JURISDICTION.

The judgments of the Court of Appeals were entered on February 4, 1946 (R. 43). The petition for writs of certiorari was filed on May 3, 1946, and allowed on June 10, 1946 (R. 47). The jurisdiction of this court is based on Section 240(a) of the Judicial Code, as amended; 28 U. S. Code, section 347.

THE QUESTIONS PRESENTED.

(1) On the merits, the question presented is whether the respondent's right to "select" and to have patented to it certain public lands, in exchange for other lands which respondent had previously reconveyed to the United States, *pursuant to the acts of June 22, 1874, and April 28, 1904*—is a claim to lands granted "in aid of the construction of any portion of its railroad" and therefore within the terms of a certain release—executed by respondent pursuant to the Transportation Act of 1940—of further claims to lands granted "in aid of the construction of any portion of its railroad."

If such selection rights *under the Acts of* 1874 *and* 1904 are claims to lands granted *in aid of construction*, they were extinguished by the release. If they are not claims to lands granted in aid of construction, then they are valid selection rights which petitioners have wrongfully and mistakenly rejected and refused to recognize solely because of the release.

(2) The Government also raises a secondary question whether the Secretary's construction of the statutes in question—the Acts of 1874 and 1904 above cited, and the Act of July 27, 1866 which provided for a grant of lands to respondent's predecessor in aid of the construction of its railroad—involves the exercise of a discretion not reviewable by the courts and whether the courts below had or have jurisdiction to grant the relief sought, by injunction or mandatory order.

STATUTES INVOLVED.

The relevant parts of the Act of July 27, 1866, c. 278, 14 Stat. 292, entitled An Act granting lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast; the Act of June 22, 1874, c. 400, 18 Stat. 194, entitled An Act for the relief of settlers on railroad lands; the Act of April 28, 1904, c. 1810, 33 Stat. 556, entitled An Act for the relief of small-holding settlers within the limits of the grant of land to the Atlantic and Pacific Railroad Company in the Territory of New Mexico; and the Act of September 18, 1940, c. 722, 54 Stat. 954, entitled the Transportation Act of 1940, are set out in the Appendix to petitioners' brief, pages 56-61.

STATEMENT OF THE CASE.

Respondent (hereinafter referred to as Santa Fe Pacific) is successor to the Atlantic and Pacific Railroad Company, a corporation created by the Act of July 27, 1866, c. 278, 14 Stat. 292, and to the grant of lands to the said company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast (R. 2, 20).

Included in the lands granted to the Atlantic and Pacific Railroad Company, and acquired and owned by Santa Fe Pacific as successor to Atlantic and Pacific, were two quarter-quarter sections in New Mexico described in paragraph 5 of the complaint in No. 97 (R. 2) and six quarter-quarter sections in Arizona described in paragraph 5 of the complaint in No. 98 (R. 20). These lands were within the primary or place limits of the grant, title to which vested in the grantee as of March 12, 1872, upon the definite location of the railroad (R. 2, 20).

In 1911 the Commissioner of the General Land Office requested Santa Fe Pacific to relinquish to the United States the whole section which included the two quarter-quarters in New Mexico above mentioned. This relinquishment was requested pursuant to the Act of April 28, 1904, c. 1810, 33

Stat. 556 (R. 2). Santa Fe Pacific acquiesced and by deed of relinquishment dated December 18, 1911, reconveyed the section in question to the United States. The relinquishment was accepted and approved by the Secretary of the Interior, and Santa Fe Pacific was notified that it was authorized to select other lands, in lieu of the lands relinquished, pursuant to the Act of April 28, 1904 (R. 3).

In 1916 Santa Fe Pacific was likewise requested by the Commissioner of the General Land Office to relinquish among other lands the six quarter-quarter sections in Arizona above mentioned. This relinquishment was requested pursuant to the Act of June 22, 1874, c. 400, 18 Stat. 194 (R. 20). Santa Fe Pacific acquiesced and by deeds of relinquishment dated November 27, 1916, and December 15, 1916, reconveyed the lands described to the United States. This relinquishment was likewise accepted and Santa Fe Pacific was notified that it was authorized to select other lands, in lieu of the lands relinquished, pursuant to the Act of June 22, 1874 (R. 20).

Neither the Act of June 22, 1874, nor the Act of April 28, 1904, imposed any limitation of time on the right to select other lands, in lieu of lands relinquished and reconveyed to the United States pursuant to those acts, and under the regulations and practice of the Department of the Interior such selections were permitted at any time, provided they were within the terms of the act in question and provided also that they were based on a relinquishment which had not already been used as base for a similar lieu selection. See General Land Office Circular No. 522, January 24, 1917, 45 L. D. 617, as amended by Instructions of February 5, 1932, 53 I. D. 592; Code of Federal Regulations, Title 43, secs. 273.56-273.57.

August 28, 1940, Santa Fe Pacific exercised its right of selection based on the relinquishment of the two quarter-quarters in New Mexico above mentioned, by making and filing a selection of two other quarter-quarter sections in New Mexico, described in paragraph 8 of the complaint in No. 97 (R. 3). It is alleged in the complaint, and admitted

by the motion to dismiss, that the lands so selected were vacant public land available for selection; that the selection was made under the Act of April 28, 1904, in lieu of the lands relinquished as above stated; and that the relinquished lands had not theretofore been designated as base for any similar selection (R. 3).

March 23, 1943, Santa Fé Pacific exercised its right of selection based on the relinquishment of the six quarter-quarters in Arizona above mentioned, by making and filing selections of other lands described in paragraph 9 of the complaint in No. 98 (R. 20-21). It is alleged in the complaint, and admitted by the motion to dismiss, that the lands so selected were vacant public land available for selection; that the selections were made under the Act of June 22, 1874, in lieu of the lands relinquished as above stated; and that the relinquished lands had not theretofore been designated as base for any similar selections (R. 21, 22).

In both cases, by decisions of May 15 and 22 and June 12, 1943, the Commissioner of the General Land Office held the selections for rejection on the ground that Santa Fe Pacific had no further rights under the Act of June 22, 1874, or the Act of April 28, 1904, in view of a release which Santa Fe Pacific had filed, on December 18, 1940, of

> "any and all claims of whatever description to lands, interests therein, compensation or reimbursement therefor on account of lands or interests granted, claimed to have been granted, or claimed should have been granted by any act of the Congress to Santa Fe Pacific Railroad Company or to any predecessor in interest in aid of the construction of any portion of its railroad."[1]

This release was filed pursuant to Section 321 (b), Title III, Part II, of the Transportation Act of 1940, and was accepted and approved by the Secretary of the Interior on March 1, 1941 (R. 3-4, 6-7, 21).

[1] The release excluded lands which had already been patented or certified to Santa Fe Pacific or its predecessor, and some other categories of lands not material to this case.

Santa Fe Pacific appealed to the Secretary of the Interior, and upon denial of the appeal moved for rehearing, to no avail (R. 4, 21).

Santa Fe Pacific thereupon filed in the District Court the complaints herein, in each case praying a judgment enjoining the defendants—the Secretary of the Interior, the Assistant Secretary of the Interior, and the Commissioner of the General Land Office—from rejecting the selections in question on the ground that they were barred by the release, and directing them to determine the rights of Santa Fe Pacific to the selected lands without regard to the release (R. 1-6, 19-23).

In each case the defendants (petitioners here) moved to dismiss the complaint on the ground that it failed to state a case in which relief could be granted. In each case the District Court allowed the motion and dismissed the complaint, the District Court being of the opinion that the Acts of 1874 and 1904 were a part of the same legislative scheme as the granting act of 1866, that lands selected pursuant to the Acts of 1874 and 1904 were in substitution for the original lands granted by the Act of 1866 in aid of construction, and that Santa Fe Pacific's rights to select lieu lands under the Acts of 1874 and 1904 were, therefore, claims to lands granted in aid of construction and within the scope of and extinguished by the release (R. 14-18, 35).

Santa Fe Pacific then appealed to the United States Court of Appeals for the District of Columbia. The two cases were heard together and disposed of in one opinion, the Court of Appeals reversing the District Court. The majority of the Court of Appeals held:

1. That the Transportation Act of 1940 required and the release filed pursuant thereto was in terms a release of further claims to lands granted *in aid of construction.*

2. That the Acts of 1874 and 1904 were not grants in aid of construction, nor amendments of the Act of 1866, but were separate statutes enacted for the purpose of authorizing voluntary exchanges of lands previously granted to the railroad company for other lands to be selected, and that

the railroad company's right to make such selections, in completion of such voluntary and partly executed exchanges, is not a claim to lands granted "in aid of the construction of any portion of its railroad" and therefore not affected by the release filed pursuant to the Transportation Act of 1940.

SUMMARY OF THE ARGUMENT.

I. The Transportation Act of 1940 required and the release filed by Santa Fe Pacific pursuant thereto was in terms a release of further claims to lands, or interests therein, granted "in aid of the construction of any portion of its railroad."

The claims so released, so far as Santa Fe Pacific alone was concerned, involved approximately 1,500,000 acres of indemnity lands lost to the grant, and no question has ever been raised as to the validity or effect of the release as to those lands or claims.

The release of such claims has nothing whatever to do with the selections here in question which are in completion of exchanges proposed by the Secretary of the Interior under the Acts of 1874 and 1904 and partly executed by respondent's reconveyance to the United States of the base lands sought by the United States.

II. The Acts of 1874 and 1904 were not amendments of the Act of 1866, but were separate and distinct enactments for the purpose of enabling the United States to recover title to lands previously granted in aid of construction (and which the United States sought to recover for the benefit of settlers), in exchange for which the Acts of 1874 and 1904 tendered to the railroad company the right to select other public lands in lieu of such lands voluntarily relinquished and reconveyed to the United States.

The Act of 1866—the granting act in aid of construction—expressly provided for indemnity selections where lands within the primary or place limits of the grant were lost to the grant, and that right of indemnity was a part

of the grant in aid of construction, and therefore—to the extent that it was unsatisfied at the time of the release filed pursuant to the Transportation Act of 1940—was a claim to lands granted in aid of construction.

The rights here in question, on the other hand, are rights based on the Acts of 1874 and 1904 and, in each case, the offer and acceptance resulting from the Government's request for relinquishments and the railroad company's action in so relinquishing and reconveying the lands sought by the Government. The lieu lands selected in completion of such voluntary exchanges, under the Acts of 1874 and 1904, are therefore not claims to lands granted in aid of construction.

It is not enough to say that such lands selected under the Acts of 1874 and 1904 are in substitution for lands originally granted. That is not the question here presented. The question is whether the lands now selected in completion of such voluntary exchanges are themselves lands *claimed as granted in aid of construction.*

The voluntary character of the exchanges in question is what differentiates the railroad company's right to the lands selected, from its right to *indemnity* under the Act of 1866, the latter being precisely the further claim to lands granted in aid of construction which was released pursuant to the Transportation Act of 1940.

III. The relief sought—by injunction or mandatory order—is within the jurisdiction of the courts below, and the granting of such relief in these cases does not encroach on the lawful exercise of any discretion vested in the Secretary of the Interior.

The historic use of the remedy of injunction or mandamus in cases involving the Secretary of the Interior and rights claimed under the public land laws is supported by many cases. *Santa Fe Pacific R. Co.* v. *Lane*, 244 U. S. 492; *Payne* v. *Central Pacific R. Co.*, 255 U. S. 228; *Santa Fe Pacific R. Co.* v. *Fall*, 259 U. S. 197; [illegible]s v. *Fox*, 300 U. S. 82.

The Administrative Procedure Act, Public No. 404, approved June 11, 1946, section 10 of which is concededly a

restatement of existing law, is legislative recognition of respondent's right to a judicial review of the action of the Secretary of the Interior in these cases, under the decisions cited.

ARGUMENT.

I. The release filed by respondent pursuant to the Transportation Act of 1940 was a release of further claims to lands granted in aid of construction.

The legislative history of the Transportation Act of 1940 throws little or no light on the origin of subsection (b) of section 321, Title III, Part II. The act as a whole was the culmination of numerous proposals and bills to amend the Interstate Commerce Act and to extend its application to other forms of transportation, in particular to water carriers. The bill which finally became the Transportation Act of 1940 was S. 2009, 76th Congress, First Session. Section 321, Title III, Part II, was added to the bill as new legislation by the House Committee on Interstate and Foreign Commerce, with a brief statement in the report of the Committee of the terms of the two subsections but no further explanation. H. Rept. 1217, 76th Congress, First Session. After passage by both Houses, the bill was considered by a conference committee and further amended, including an amendment of subsection (a) of section 321, Title III, Part II, but the only further explanation of subsections (a) and (b) in the report of the conference committee is a brief statement of the terms thereof. H. Rept. 2016, 76th Congress, Third Session.

The purpose of section 321 was obviously: (1) to make certain rate concessions to the carriers by eliminating land-grant rates on non-military traffic, and (2) as a condition thereto, to obtain the release and relinquishment to the United States of all remaining unadjusted land grants in aid of the construction of railroads.

The releases, required as a condition to the rate concessions, were not general releases of any and all claims against the United States of whatever character, but were

specifically releases of any claims of carriers by railroad to lands, or interests therein, claimed by such carriers under any grants to them or their predecessors in interest in aid of the construction of their railroads. The statute expressly so provided:

> "(b) If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States *to aid in the construction of any part of the railroad operated by it*, the provisions of law with respect to compensation for such transportation shall continue to apply to such transportation as though subsection (a)[4] of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest *as aforesaid*." (Italics added)

The regulations also expressly so provided, including a form of release which recited that the company executing the release "relinquishes, remises and quitclaims to the United States of America any and all claims of whatever description to lands, interest therein" etc. "granted, claimed to have been granted or claimed should have been granted by any act of the Congress to the..... Railroad (Railway) Company or to any predecessor in interest *in aid of the construction of any portion of its railroad*". General Land Office Circular No. 1480, Section 273.64; 6 F. R. 422; Code of Federal Regulations, Title 43, Section 273.64. (Italics added)

The release filed by respondent and accepted and approved by the Secretary of the Interior was in the form prescribed and was expressly a release of

"any and all claims of whatever description to lands, interests therein, compensation or reimbursement therefor on account of lands or interests granted, claimed to have been granted, or claimed should have been granted by any act of the Congress to Santa Fe Pacific Railroad Company or to any predecessor in interest *in aid of the construction of any portion of its railroad.*" (R. 6)

This was the exact form prescribed by the Secretary of the Interior in General Land Office Circular 1480 (6 F. R. 422) including the words "in aid of the construction of any portion of its railroad"—and was in strict compliance with the statute.

Obviously the words "any act of the Congress" were necessary because the form was prescribed for use by all railroads which had received grants in aid of construction, under many different acts of Congress. This is clear from Section 273.64 of Circular 1480, 6 F. R. 422, which prescribed the form of the release, as follows:

"273.64. *Form of release.* The release must be substantially in the following form:

"The . . . Railroad (Railway) Company, a corporation organized and existing by virtue of the laws of the State of . . ., with offices and principal place of business at . . ., in the state of . . ., hereby, in accordance with section 321 of Part II of Title III of the Transportation Act of 1940, and the rules and regulations issued thereunder by the Secretary of the Interior, relinquishes, remises and quitclaims to the United States of America any and all claims of whatever description to lands, interests therein, compensation or reimbursement therefor on account of lands or interests granted, claimed to have been granted or claimed should have been granted by any act of Congress to the . . . Railroad (Railway) Company or to any predecessor in interest in aid of the construction of any portion of its railroad.

"This release does not embrace the rights of way or station grounds of this company, lands sold by the company to innocent purchasers for value prior to September 18, 1940, lands embraced in selections made by the

company and approved by the Secretary of the Interior prior to September 18, 1940, or lands which have been patented or certified to the company or any predecessor in interest in aid of the construction of its railroad.

"(Followed by seal, signatures, execution and acknowledgment.)"

The history of such grants in aid of the construction of railroads is well known. For a review of the numerous acts which granted lands in aid of construction, see *Public Aids to Transportation—Federal Coordinator of Transportation*, Vol. II, pages 3-42. For description and references to specific grants, see also: *Santa Fe Pacific R. Co.* v. *Lane*, 244 U. S. 492 (Atlantic and Pacific grant); *Payne* v. *Central Pacific R. Co.*, 255 U. S. 228 (Central Pacific grant); *United States* v. *Northern Pacific R. Co.*, 256 U. S. 51 (Northern Pacific grants); *Southern Pacific R. Co.* v. *Fall*, 257 U. S. 460 (Southern Pacific main line grant).

The status of the Atlantic and Pacific grants as of June 30, 1938, is shown in *Transportation—Information Concerning Land Grants for Roads, Canals, River Improvements and Railroads*, Information Bulletin 1939, Series No. 5 (Government Printing Office: 1940), as follows:

GRANTS PRACTICALLY ADJUSTED, BUT NOT CLOSED

Name of railroad	Date of grant	Area of grants in acres	Acres patented	Amount due [in acres]
* * * * * * *				
Atlantic & Pacific R. R. Co. (Western Division)	July 27, 1866 (14 Stat. 292)	13,423,237.02	11,917,309.83	1,505,927.19
* * * * * * * * *				

This was approximately the status of the unadjusted Atlantic and Pacific grant when the Transportation Act of 1940 was enacted, and it was obviously for the purpose of writing off and extinguishing such unsatisfied indemnity claims under the original granting acts that subsection (b) was written into the Transportation Act of 1940.

The release required by subsection (b) was filed in compliance with the act and the regulations prescribed by the

Secretary of the Interior, with the result that respondent has released and relinquished all further claims to approximately 1,500,000 acres of land granted by the Act of July 27, 1866, and earned by the construction of the railroad, but never patented to respondent or its predecessor.

Respondent's position in these cases is that the release has nothing whatever to do with the selections here in question which are in completion of *exchanges* proposed by the Secretary of the Interior under the Acts of 1874 and 1904 and *partly executed* by respondent's reconveyance to the United States of the base lands sought by the United States. It is respectfully submitted that this is not—as suggested in the brief for petitioners (page 10)—"an attempt to avoid" the release.

II. Respondent's rights to select lands under the Acts of 1874 and 1904, in completion of voluntary and partly executed exchanges under those acts, are not claims to lands granted in aid of construction.

The Act of June 22, 1874, was a remedial act which provided that in cases where actual settlers were found to have entered on lands granted to any railroad company, the railroad company might relinquish such lands to the United States and "shall be entitled to select an equal quantity of other lands in lieu thereof". The act came before this court in *Santa Fe Pacific R. Co.* v. *Work*, 267 U. S. 511, and in the opinion of this court in that case the purpose of the act was stated as follows:

> "The Act of 1874 was passed to help homestead and other settlers who were in hard case because they had established their settlement after the grant to the Railroad Company was held to have attached. The question when it did attach was for a long time doubtful and the subject of litigation. This Act of 1874 was intended to induce the railroad companies to relinquish such lands thus illegally occupied as against them by promising in lieu thereof other lands of equal area in both odd and even sections within the prescribed limits."

That case, it may be noted, involved an unsuccessful attempt by the railroad company to have the Act of 1874 construed as in *pari materia* with the Act of 1866, so that certain provisions of the original granting act could be applied to lieu selections under the Act of 1874. The same contention, rejected in that case, is now adopted by the Secretary of the Interior in support of his action in the case at bar, No. 98.

As to the clause in the Act of 1874 which provided that the railroad company shall receive title to the selected lands "the same as though originally granted"—it was held in the same case, in the Court of Appeals, 54 App. D. C. 161, 163, that this did not mean that the company's right was to be measured by the terms of the original granting act but that it referred

> "merely to the kind of title and the avenue through which it shall pass, and does not relate to the quality of the land to be selected, or invest the railroad company with any right of selection equivalent to that provided in the original grant. They are words of conveyance, not of power."

The Act of April 28, 1904, was likewise a remedial act which plainly and in simple terms offered a trade, section for section, of public lands of the United States for lands owned by the railroad company. Its legislative history shows that it was enacted because the lands in New Mexico sought by the United States for the benefit of certain settlers were small holdings of 160 acres or less which the railroad company was unwilling to relinquish under the Act of 1874 (such small tracts occupied by settlers being ordinarily the best land in each section), although willing to relinquish them as parts of whole sections if authorized so to do. H. Rept. 1203, 58th Congress, 2nd Session; Cong. Recd., vol. 38, part 3, p. 2900.

The Act of 1904 came before this court in *Santa Fe Pacific R. Co.* v. *Fall*, 259 U. S. 197, in a case similar to the case at bar, No. 97, to enjoin the Secretary of the Interior from

rejecting selections under the Act of 1904. In that case it was held that the Secretary in acting on the selections in question had exceeded his authority and the powers conferred upon him by the statute when he took into account facts not known at the time the selections were filed, and that the railroad company was entitled to an injunction against the rejection and cancellation of the selections on that ground.

The chief difference between the Acts of 1874 and 1904 is that the former was a general act applicable to all railroad grants, and the Act of 1904 was a special act applicable only to the Atlantic and Pacific grant in New Mexico.

The fundamental error on which the action of the Department of the Interior in these cases is based is in the appraisal and characterization of the Acts of 1874 and 1904. Thus the Secretary's decision on the selections involved in No. 97 (R. 10), after referring to certain earlier acts which recognized the validity as against the United States of the claims of certain settlers, states:

> "From the foregoing, it is evident that the purpose of the act of April 28, 1904, was to reimburse the Santa Fe Company for losses in the grant of July 27, 1866, occasioned by the inability of the United States to furnish good title to lands acquired from Mexico under the treaty of Guadalupe-Hidalgo in 1848 and the Gadsden purchase of 1853 which were occupied by settlers who had entered in good faith."

On the contrary, it is perfectly clear and has never been questioned that respondent and its predecessor had good title to the lands sought to be recovered by the United States under the Act of 1904, had suffered no "losses" from the grant, and there was no "inability" on the part of the United States to furnish "good title" to the railroad company. As the Court of Appeals pointed out in its opinion in these cases.

> "The lands released pursuant to the 1874 and 1904 Acts had for all practical purposes vested in the railroad.
>
> * * * *

"Viewed from a slightly different perspective, it will be seen that the government could not have reached the lands relinquished under the 1874 and 1904 Acts had the railroad refused to reconvey—as it had the unquestioned right to do. This was specifically admitted by the Solicitor for appellees in the oral argument in response to a direct question from the court. Admittedly also the lands given up by reconveyance would not have been returned to the government by the release under the 1940 Act." (R. 41).

The contention that the Acts of 1874 and 1904 were in legal effect amendments of the Act of 1866 and are to be read as in *pari materia* with the Act of 1866 is likewise unsound and inconsistent with the decision of this court in *Santa Fe Pacific R. Co.* v. *Work, supra.* The Acts of 1874 and 1904 gave rise to contractual obligations separate and distinct from those of the Act of 1866. This too is clearly pointed out in the opinion of the Court of Appeals in these cases:

"Our decision rests on what we regard as the distinctly separate character of the contractual obligations. Under the 1866 Act the government granted land as an incentive to build. Under the 1874 and 1904 Acts the government granted land in exchange for that which it wished others to have free from any possible claims of the railroads, which admittedly had good title. To say that because the lands reliquished were granted "in aid of construction" other land claims accepted in place and stead of the relinquished lands are to be regarded as subject to the terms of the original grant is, we think, to ignore the succeeding transactions and vitiate contractual rights arising wholly independently of the original Act. We do not believe that such was the intention of Congress."

* * * *

"Even regarding the Acts of 1866, 1874 and 1904 as a part of the same 'legislative scheme' does not preclude the result we have reached. Unquestionably the acts are by their character related to the same general problem of adjusting railroad land claims, but this

> does not foreclose the possibility of separate rights being established as they were by reason of independent transactions in accordance with the respective provisions of the different statutes." (R. 41, 42)

Only the most strained construction of the Acts of 1874 and 1904 can justify the conclusion that selections under those acts, in completion of voluntary and partially executed exchanges, are claims to lands granted in aid of construction.

III. The relief sought—by injunction or mandatory order—is within the jurisdiction of the courts below and the granting of such relief in these cases does not encroach on the lawful exercise of any discretion vested in the Secretary of the Interior.

The question whether upon a proper showing of facts an aggrieved party is entitled to a judicial review of the action of an administrative officer, such as the Secretary of the Interior, and that such review may be had by an action for injunction or mandamus in the courts of the District of Columbia, has recently been given consideration by this court in *Stark* v. *Wickard*, 321 U. S. 288.

The historic use of the remedy of injunction or mandamus in cases involving the Secretary of the Interior and rights claimed under the public land laws is supported by many cases. *Santa Fe Pacific R. Co.* v. *Lane*, 244 U. S. 492; *Payne* v. *Central Pacific R. Co.*, 255 U. S. 228; *Santa Fe Pacific R. Co.* v. *Fall*, 259 U. S. 197; *Ickes* v. *Fox*, 300 U. S. 82.

Santa Fe Pacific R. Co. v. *Fall*, for example, was a suit to enjoin the Secretary of the Interior from rejecting and cancelling selections under the Act of 1904, and the use of injunction as a remedy was approved, the opinion of this court on that point being as follows:

> "The government argues that there was no jurisdiction over the bills because the question whether the lands selected were of the same quality as those relinquished rested wholly in the judgment of the Secre-

> tary. But the position of the Railroad Company is that the Secretary went beyond the powers conferred upon him by the statute when he took into account facts not known at the time of the selection, and we are of opinion that the company is entitled to bring that question into court." 259 U. S. 197, 198-199.

Compare *Payne* v. *Central Pacific R. Co.*, 255 U. S. 288, where this court said:

> "Our conclusion is that, in giving effect to the withdrawal as against the prior selection, which admittedly was valid when made, the appellants departed from a plain official duty, and that to avoid the resulting injury to the plaintiff, for which no other remedy is available, an injunction should issue directing a disposal of the selection on its merits, unaffected by the withdrawal."

The brief for petitioners (pages 47-54) includes a discussion of the Administrative Procedure Act, Public Law No. 404, 79th Congress, Second Session, approved on June 11, 1946, the argument being that Section 10 of the Act—on judicial review—which became effective on September 11, 1946, has no bearing on these cases.

Respondent makes no point that the Administrative Procedure Act has conferred on respondent a right of action which it did not already have, but respondent suggests that the act is a legislative recognition of the correctness of respondent's position on the question of remedy and of respondent's right to a judicial review of the action of the Secretary of the Interior and his associates in these cases, on the authorities above cited.

There can be no doubt—as is conceded in the brief for petitioners (page 49)—that Section 10 of the Administrative Procedure Act was intended *to restate existing law.*

What then is the existing law which Section 10 has restated?

Section 10 provides explicitly that—except so far as statutes preclude judicial review, or agency action is by law committed to agency discretion —

"(a) RIGHT OF REVIEW.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) FORM AND VENUE OF ACTION.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

"(c) REVIEWABLE ACTS.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.

* * * *

"(e) SCOPE OF REVIEW.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court."

Certainly, if this is a restatement of existing law, it disposes of any contention that the Secretary of the Interior acting in such a matter as this is above the law or that his construction of the public land laws is the exercise of a non-reviewable discretion.

The real question is the cases at bar is whether the Secretary of the Interior is right or wrong in his construction of the Acts of 1874 and 1904 and in his refusal to recognize respondent's rights to the lands in question, selected in completion of the voluntary exchanges initiated and partly executed pursuant to those acts. If he is wrong, respondent's right to the relief prayed is clearly established under the decisions cited.

Respectfully submitted,

LAWRENCE CAKE,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES

Nos. 97 and 98.—October Term, 1946.

Julius A. Krug, Secretary of the Interior, et al., Petitioners, 97 v. Santa Fe Pacific Railroad Company. Julius A. Krug, Secretary of the Interior, et al., Petitioners, 98 v. Santa Fe Pacific Railroad Company.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[February 3, 1947.]

Mr. Justice Black delivered the opinion of the Court.

In the first half of the Nineteenth Century the United States acquired a vast new area of sparsely populated lands in the South and West. Settlement and absorption of this territory into the older part of the country became a national problem which demanded for its solution a more rapid and extensive means of transportation of goods and people than was provided by wagons, stagecoaches, and waterways. The building of railroads largely provided the answer. They made it possible for the frontier homesteads and communities to be established on the lands of the new territory and yet maintain live contact with the national economy and culture. To encourage a rapid railroad building program, Congress chose to make public grants of a large proportion of the new lands to underwrite and subsidize the participation of private individuals and privately owned companies in the program.[1] In this con-

[1] For an account see *Public Aids to Transportation*, Section of Research, Federal Coordinator of Transportation (1940) I, 45–46; Heaton, *Land Grants*, Encyc. Soc. Sciences (1935) IX, 32–35.

gressional program of land grants "in aid of construction" were sown the seeds of the present lawsuit.

Enormous areas of public lands were granted railroads, almost equal to the acreage of the New England States, New York and Pennsylvania combined.[2] Execution of the land-grant program was marked by innumerable complex and unforeseen difficulties; its course has been beset by claims and counterclaims asserted by and between settlers, railroads, and Government.[3] Congress, the executive agencies, and the courts have been repeatedly called upon to help resolve these conflicting claims. The lapse of nearly a century since the program was instituted has not resolved all of them. This lawsuit requires consideration of old and recent congressional efforts to settle these persistently recurring controversies.

One substantial field of railroad-government controversy has been the terms of the original land-grant acts which required the railroads to carry Govenment goods and personnel free of tolls. By reason of judicial interpretation of these terms, as supplemented by periodic legislation,[4] land-grant railroads for more than half a century immediately prior to 1940 transported for the Government

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[2] Heaton, *Land Grants, supra*, 35. Other sources put the figure of federal grants-in-aid at 134,303,668 acres, equivalent to 204,849 square miles or 6.93 per cent of the area of the continental United States. Seventy railroads received these grants. *Public Aids to Transportation, op. cit. supra*, n. 1, 13. See also *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 273.

[3] See *Public Aids to Transportation, op. cit. supra*, n. 1, II, 5–56, Gates, *Land Grants to Railways*, Dictionary of Amer. Hist. (1940) III, 237. See also cases collected 43 U. S. C. A. §§ 888, 890, 893, 894, 900, 904; 43 F. C. A. §§ 888, 890, 893, 894, 900, 904.

[4] See *Lake Superior & M. R. R.* v. *United States*, 93 U. S. 442; *Atchison, T. & S. F. R. R.* v. *United States*, 15 Ct. Cls. 126, 148; *Cf.* 18 Stat. 72, 74; 18 Stat. 452, 453–454; 20 Stat. 377, 390; 27 Stat. 174, 180.

at one-half of the standard commercial rates. During the depression years beginning in the late 1920's and immediately following, railroad earnings declined considerably, and a movement began to relieve the roads of their land-grant rate obligations. Studies by some Government selected agencies recommended legislation for outright repeal of the provisions for rate concessions to the Government.[5] Bills to accomplish this in the 75th and 76th Congresses failed to pass.[6] But § 321 of the Transportation Act of 1940[7] provided that land-grant roads could, by compliance with specified conditions,[8] collect from the

[5] See Committee of Three: Report of March 24, 1938, H. Doc. No. 583, 75th Cong., 3d Sess., 32; Committee of Six: Report of December 23, 1938, in Hearings, House Committee on Interstate and Foreign Commerce on H. R. 2531, 76th Cong., 1st Sess., II, 260.

[6] H. R. 10620, 75th Cong.; S. 3876, 75th Cong.; S. 1915 and S. 1990, 76th Cong.

[7] 54 Stat. 954, 49 U. S. C. § 65.

[8] Section 321 (b) provides that

"If any carrier by railroad . . . or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to (reduced rate) compensation for such transportation shall continue to apply to such transportation as though subsection (a) of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interest in lands, compensation, or reimbursement on account of lands or interest in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from the date of the enactment of this Act. Nothing in this section shall be construed as requiring any such carrier to reconvey to the United States lands which have been heretofore patented or certified to it, or to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find to have been heretofore sold

Government full commercial rates, except for the transportation of military and naval freight and personnel. In brief, it required that a railroad, to qualify for full rates, must execute, within a year after passage of the Act, a release of any claim it might have "against the United States to lands, interest in lands, compensation, or reimbursement on account of lands or interests in lands, which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any . . . predecessor in interest *under any grant* to such carrier or such predecessor in interest as aforesaid." (Italics supplied.)

Shortly after passage of this Act respondent took advantage of it, and gave the Government a release framed substantially in the words of the statute.[9] Its predecessor in

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by any such carrier to an innocent purchaser for value or as preventing the issuance of patents to lands listed or selected by such carrier, which listing or selection has heretofore been fully and finally approved by the Secretary of the Interior to the extent that the issuance of such patents may be authorized by law."

[9] "Santa Fe Pacific Railroad Company, a corporation organized and existing by virtue of an Act of Congress approved March 3, 1897 (29 Stat. 622), with office and principal place of business at New York, in the State of New York, hereby, in accordance with section 321 of Part II of Title III of the Transportation Act of 1940, and the rules and regulations issued thereunder by the Secretary of the Interior, relinquishes, remises and quitclaims to the United States of America any and all claims of whatever description to lands, interests therein, compensation or reimbursement therefor on account of lands or interests granted, claimed to have been granted, or claimed should have been granted by any act of the Congress to Santa Fe Pacific Railroad Company or to any predecessor in interest in aid of the construction of any portion of its railroad.

"This release does not embrace the rights of way or station grounds of this company, lands sold by the company to innocent purchasers for value prior ot September 18, 1940, lands embraced in selections made by the company and approved by the Secretary of the Interior prior to September 18, 1940, or lands which have been patented or certified to the company or any predecessor in interest in aid of the construction of its railroad."

interest had obtained a grant to lands in Arizona and New Mexico, under an Act of 1866 containing the usual governmental rate concession terms. 14 Stat. 292, 297.[10] The 1866 Act had specifically recited that if the Government, because of prior settlement of part of the granted lands by homesteaders, could not give possession to some of the lands granted to the railroad, it could select, under the direction of the Secretary of the Interior, other public lands in lieu of them as an indemnity. Respondent had large outstanding claims against the Government for these "indemnity" lands when it signed the release and concedes that the release extinguishes these claims.

But it had other so-called lieu land claims against the Government which it asserts were not extinguished. The railroad urges that these claims are not covered by the Act or by the release. They, allegedly, are not claims "on account of" or "under any grant" of lands, but rest on contractual exchanges of lands made under the Acts of 1874 and 1904. 18 Stat. 194; 33 Stat. 556. These Acts largely represented a congressional effort to settle conflicts among railroads, Government, and settlers, which arose by reason of settlement by homesteaders on railroad-granted lands after the grants had been made. Both Acts provided that where settlers had so occupied railroad-granted lands, the railroad could, upon relinquishment of its title to them, select other lands in lieu of them. The procedure for selecting the lieu lands under the 1874 and 1904 Acts was substantially identical to the original procedure provided by the Acts for selection of indemnity lands. Before the 1940 Act respondent had, under the 1874 and 1904 Acts, relinquished title to the Government to certain lands previously granted. In August 1940, and subsequently in March 1943, respondent filed applications with the Secretary of the Interior to select its lieu lands. After the re-

[10] *Cf.* note 4, *supra*.

spondent signed the release, and because of it, the Secretary rejected the applications. The railroad then filed this suit in a Federal District Court for relief by injunction or by way of mandamus to require the Secretary and other Interior Department officials to pass on its applications without regard to the release. The District Court dismissed the bill on the merits, holding that the statute and release barred the claims. It read the 1940 Act as defining a congressional purpose "to wipe the slate clean of such claims by any railroad which enjoyed the benefits of the rate concessions made by the Transportation Act . . ." 57 F. Supp. 984, 987. The Court of Appeals for the District of Columbia reversed, holding, as respondent urges in this Court, that the 1940 Act did not apply to the type of claims involved here. 153 F. 2d 305. Importance of the question decided caused us to grant certiorari.

We agree with the District Court. We think, as it held, that the Secretary of the Interior's construction of the 1940 Act was clearly right. Therefore, we do not discuss the Government's contention that, since the Secretary's construction was a reasonable one, it was an allowable exercise of his discretion which should not be set aside by injunction or relief in the nature of mandamus. See *Santa Fe P. R. R.* v. *Work*, 267 U. S. 511, 517; *cf. Santa Fe P. R. R.* v. *Lane*, 244 U. S. 492.

The respondent argues the case here as though the 1940 Act only applied to claims for "lands under any grant." The language is not so narrow. It also required railroads to surrender claims for "*compensation, or reimbursement* on account of lands, or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted . . . under any grant." (Italics supplied.) This language in itself indicates a purpose of its draftsmen to utilize every term which could possibly be conceived to give the required release a scope

so broad that it would put an end to future controversies, administrative difficulties, and claims growing out of land grants. Beyond a doubt the words "compensation" and "reimbursement" as ordinarily understood would describe a payment to railroads in money or in kind for the surrender of lands previously acquired by them "under a grant." [11] If they do not have this meaning, their use in the Act would have been hardly more than surplusage. And when viewed in the context of the historical controversies and claims under the land grants, the conclusion that the 1940 Act covers claims such as respondent's seems inescapable.

The legislative history of the Act shows that Congress was familiar with these controversies. In 1929 it passed an Act intended to authorize and require judicial determination of land grant claims of the Northern Pacific Railroad in order finally and completely to set them at rest. 46 Stat. 41. The suit authorized by that Act was tried in a Federal District Court and was pending in this Court when the 1940 Act was passed. *United States* v. *Northern Pac. Ry.*, 311 U. S. 317. Our decision in it shows the complexity and ramifications of the numerous questions involved in land grant controversies. Reference to this case was made by Government officials in urging Congress to include in the predecessors of the 1940 Act a requirement that the railroad surrender all claims arising out of land grants as a prerequisite to any Government rate concessions.[12] Here, as in the 1929 Act, which applied to the claims of only one railroad, we think Congress intended to bar any future claims by all accepting railroads which

[11] See *United States* v. *Northern P. Ry.*, 311 U. S. 317, 332, 335, 353, 354.

[12] See Hearings, Subcommittee of the Senate Committee on Interstate Commerce, S. 1915, 1990 and 2294, 76th Cong., 1st Sess., 65, 66; see also *ibid.*, 59, 164.

arose out of any or all of the land-grant acts, insofar as those claims arose from originally granted, indemnity or lieu lands. All the Acts here involved, the Acts of 1866, 1874, 1904 and 1940, relate to a continuous stream of interrelated transactions and controversies, all basically stemming from one thing—the land grants. We think Congress wrote finis to all these claims for all railroads which accepted the Act by executing releases.

Reversed.